United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

74-2697

United States Court of Appeals

FOR THE SECOND CIRCUIT

B
P/s

AID AUTO STORES, INC.,

Plaintiff-Appellant,

—against—

HERBERT S. CANNON and CANNON, JEROLD & CO., INC.,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

APPELLANT'S BRIEF

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Docket No. 74-2697

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Preliminary Statement

This is an appeal from the judgment entered December 13, 1974 in the Southern District of New York following Judge Cooper's direction of a verdict in favor of certain defendants at the end of plaintiff's case on November 20, 1974. Subsequent to the filing of the notice of appeal on December 20, 1974, Judge Cooper by memorandum purported on January 28, 1975 to award attorneys' fees to defendant Herbert S. Cannon ("Cannon"). The memorandum is printed at A. 198-200.*

Issues Presented for Review

(1) Where the trial judge reversed himself in Chambers before trial after withdrawal of the jury demand upon representation that the delegate of

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* "A" refers to separate appendix, including entire transcript ("Tr.").

counsel for defendant Cannon had no authority to withdraw such demand, whether the judge erred in denying plaintiff's motion thereafter made to strike the jury demand,

(2) Whether the fiduciary claims in any event are proper subjects for the jury,

(3) Whether on the facts presented the trial judge could properly direct a verdict for defendant Cannon and his firm Cannon, Jerold & Co., Inc. at the end of the plaintiff's case on fiduciary and federal securities laws claims and thereafter award attorneys' fees and costs.

(4) Whether the Court was compelled on the basis of defendants' testimony to award judgment to plaintiff on fiduciary claims.

Statement of the Case

Summary

Defendant Cannon bought and milked a Bahamian bank —getting back his $100,000 purchase price out of the bank's own assets.

This accomplished, he as principal of defendant Cannon, Jerold participated as third largest underwriter in an underwriting of stock of plaintiff Aid Auto Stores, Inc., thereby restoring an old relationship with Arthur Rittmaster, who headed Rittmaster, Lawrence & Co., Inc.—the lead underwriter.

A week later Cannon and Rittmaster "buried the hatchet" at dinner.

Rittmaster and his firm were double fiduciaries. First, they entered into a contract as financial consultants to Aid

Auto. Second, Rittmaster joined Aid Auto's board of directors.

Cannon knew it.

Cannon had actual knowledge of Rittmaster's and Lawrence's relationship to plaintiff from the express language of plaintiff's prospectus.

Cannon's Bahamian bank was a shell. He set about to sell certificates of deposit. Plaintiff Aid Auto was the purchaser of one of such certificates of deposit for $100,000. The background of this purchase was as follows.

During the early months of 1973 Cannon met with Rittmaster and Lawrence (both principals in the lead underwriter and financial consultant to plaintiff) and was the physical conduit of personal and unsecured loans from the Bahamian bank to those individuals of $25,000 each, while Cannon knew that Rittmaster was inducing plaintiff to purchase a $100,000 certificate of deposit in the Bahamian bank.

Certificates of deposit of foreign banks are securities and must be registered for sale under Sections 2(1) and 5 of the Securities Act of 1933, and any claim of exemption must be proven by a seller or issuer.

The "bank" failed.

Plaintiff sued Cannon and his firm under the securities laws and for inducing breach of fiduciary duty. The firms of both Cannon and Rittmaster are defunct.

The trial was only against Cannon and his former firm. Rittmaster and Lawrence confessed judgment on the eve of trial for $25,000 each, but such judgments may be worthless. Judge Cooper did not require defendants to prove any exemption under or compliance with the 1933 Act nor any conceivable justification for inducing known fiduciaries for

personal gain to procure plaintiff to purchase a security in a shell "bank"—one which Cannon first milked and then could evaluate in three pages of sparse handwritten notes.

Chronology of Admitted and Undisputed Facts

1. On and prior to July 19, 1972 defendant Cannon met and conferred with unserved defendant Mori Aaron Schweitzer with respect to the purchase of the charter and stock of a Bahamian bank from a Canadian bank. (Ex. 11, consisting of diary pages, prefixed by list prepared by Cannon's secretary; A. 157-170, Tr. 169-186).

2. On September 12, 1972 defendant Cannon sent $100,000 of his own money from the Chase Manhattan Bank to Toronto Dominion Bank, Alberta, Canada as the total purchase price of a Bahamian bank charter and stock (Ex. 9; A. 162-163, Tr. 176-177).

3. On September 20, 1972 Cannon met with Schweitzer (Ex. 11).

4. By memorandum dated November 10, 1972 from Schweitzer to "Herb Cannon" and check dated November 17, 1972 in the amount of $100,000 of Atlantic-Pacific Bank and Trust Company Limited,* said bank's corporate funds were paid to and collected by defendant Herbert S. Cannon and applied to his own use (Ex. 8; A. 161-162, Tr. 173-174).

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* SEC Release 33-5425 hereinafter referred to meanders among titles and orthographies. We have endeavored to pursue evidentiary *patois*, which like the Release all refer to the identical "bank" shell entity. For convenience we have annexed as "Appendix to Brief" copies of the "SEC Docket" dated October 9, 1973 and "SEC News Digest" of September 28, 1973 quoting the release and referring to conviction and sentencing of unserved defendant Wooldridge in another matter.

By reason of Cannon's having furnished through his personal funds the entire purchase price of the bank charter and stock, and having received from the Bahamian bank its corporate funds in the same amount, Cannon had purchased the total cow with her own milk (Ex. 9; A. 162-163, Tr. 176-177; Ex. 8; A. 161-162, Tr. 173-174).

5. By reason of Cannon's furnishing all front money for the purchase, he had an "option of sharing equally with Mr. Schweitzer in all participation in the bank as per our agreement. This was given to me in exchange for my helping the initial funding of the bank. Obviously I was interested in seeing the bank be a success."

* * *

"What I meant was that subject to giving any pieces to any outsiders that we would each share equally in the stock ownership with the bank. What Mr. Schweitzer did with his half of what was left and what I did with my half was our own business, but I would presume that his half would be split with Mr. Generale" (A. 168, Tr. 183-184).

6. For many years prior to 1972 Cannon had known and had been "partners" (A. 53, Tr. 15) with defendant Rittmaster in various brokerage firms.

7. In 1972 and 1973 Cannon was the president and head of defendant Cannon, Jerold & Co., Inc. (now defunct) a member of the New York Stock Exchange and Rittmaster was the head and principal of Rittmaster, Lawrence & Co., Inc. (now defunct) an underwriter.

8. On or about November 30, 1972 and pursuant to a prospectus of that date plaintiff Aid Auto Stores sold to underwriters for distribution to the public at $7.50 per share, 140,000 shares of common stock, with proceeds to

the company of $913,500 after underwriting discounts and expenses of 97½¢ per share. The lead underwriter and "Representative" was Rittmaster, Lawrence & Co., Inc. which bought 62,000 shares. Cannon, Jerold & Co., Inc. was the third largest underwriter buying 15,000 shares. The face of the prospectus disclosed that Rittmaster, Lawrence as "Representative" would receive a two-year financial consulting agreement for an aggregate fee of $44,000 (plus warrants) payable upon consummation of the offering and had the right to designate a director of plaintiff for a period of five years (Ex. 1, Cover Page, pp. 14-15, pp. 21-22).

9. Cannon individually and as principal of Cannon, Jerold had actual knowledge of the contents of such prospectus (Ex. 1, Cover page, pp. 14-15, pp. 21-22). Cannon, Jerold as third largest underwriter made distribution of the prospectus to the public and its customers who purchased Aid Auto stock from Cannon, Jerold.

10. On December 5, 1972 Cannon had dinner with Rittmaster and Lawrence "to sort of bury the hatchet between Mr. Rittmaster and myself" (A. 167, Tr. 182; Ex. 11).

11. On December 8, 1972 Cannon met with Schweitzer (Ex. 11).

12. On December 19, 1972 plaintiff made the agreement described on the cover page of the prospectus and at pp. 21-22 (Ex. 1) with Rittmaster, Lawrence & Co., Inc. to act as "financial consultant" for a two-year period including any financial and consulting advice reasonably required and advising and assisting plaintiff in connection with any bank or other financing for the advance consideration of $44,000 (Ex. A).

13. Plaintiff relied upon Rittmaster's full and complete loyalty when he conferred or advised with its officers and directors (A. 149, Tr. 157).

14. According to Cannon's counsel in opening to the jury (A. 53, Tr. 16) the Bahamas bank was discussed at the December 5, 1972 dinner meeting with Rittmaster and Lawrence. According to Cannon's testimony (A. 196, Tr. 185-186) he believes February 8, 1973 was the first time that the Bahamian bank was discussed with Rittmaster and Lawrence.

15. On January 3, 1973 Cannon had luncheon with defendant Lawrence (Ex. 11).

16. On January 25, 1973 Rittmaster was elected a member of the Board of Directors of plaintiff (A. 127, Tr. 123).

17. On February 8, 1973 Cannon met with Lawrence and Rittmaster (Ex. 11).

18. On March 2, 1973 (A. 163, Tr. 176) Cannon went to Nassau (A. 163-166, Tr. 176-181).

19. Cannon wanted to see the bank and take a look at the books (A. 164, Tr. 178). The A & P Bank was on the ground floor of a pink stucco building—the British Colonial Hotel—there was an office with a couple of girls, a managing director whose name Cannon did not recall, with "a big kind of safe five, six feet tall and about 4 feet wide." Cannon did not know who had the combination. He did not see any income statement or statement of assets and liabilities. He examined the books (A. 162-167, Tr. 176-181).

20. Herbert S. Cannon made handwritten notes consisting of three sheets of paper (Ex. 10), the first of which

sheets shows "250 M cash outlays" including "100 M HSC to Canada" and "30 M HSC for atty fees". The second sheet shows "100,000 HSC" (middle of sheet) and another item "30,000 to HSC" (bottom third of sheet). Such second sheet also includes "130,000 available" (bottom third of sheet). Such three sheets constitute all the notes Cannon made at that time (A. 166, Tr. 181).

21. Following receipt of funds from the public offering pursuant to the prospectus dated November 30, 1972 plaintiff had purchased $400,000 of 90-day certificates of deposit of the National Bank of North America upon the suggestion of Rittmaster (A. 73, Tr. 43) and in March 1973 they were coming up for maturity and plaintiff did not have an area in which to use the funds and was trying to determine what to do with them (A. 74, Tr. 43).

22. On March 5, 1973 Cannon had lunch with Lawrence (Ex. 11).

23. "In the early part of March 1973" Rittmaster called Murray Klein, President of plaintiff, and suggested that rather than concentrate all plaintiff's holdings in one bank "we spread it out, we dilute it and in that way put ourselves in a better bargaining position in the event that we needed larger sums of money for any need down the road" (A. 74, Tr. 44).

24. Rittmaster suggested purchasing a new $200,000 certificate of deposit from National Bank of North America, purchasing a $100,000 certificate of deposit from National Bank of New Jersey and purchasing a $100,000 certificate of deposit in the Nassau bank which Klein assumed was the Hempstead National Bank in Nassau County, New York (A. 75, Tr. 44-47).

25. In the second or third week of March Klein was in Rittmaster's office with the Chairman of the Board of plaintiff when Rittmaster gave him two draft letters, the top one being addressed to the National Bank of New Jersey: when Klein returned to his office and took the letters from his attache case he found that the second letter was addressed to the "Atlantic & Pacific Bank and Trust Company, Nassau, Bahamas"; Klein called counsel, subsequently spoke to Rittmaster, and was informed by counsel that it was all right to purchase the certificate of deposit from the Bahamas bank and on April 3, 1973 wrote the Bahamas bank enclosing a $100,000 check for the purchase of a 6-month certificate of deposit (A. 75-78, Tr. 43-49).

26. Cannon first discussed the subject of a purchase by plaintiff of a certificate of deposit in the "Atlantic & Pacific Bank" with Rittmaster "a month or two before that C.D. was actually purchased, whatever that date was", and it is his best recollection that he did in fact discuss it with Rittmaster before the certificate of deposit was purchased —"absolutely" (A. 159, Tr. 171).

27. On April 6, 1973 Cannon met with Mori Schweitzer, Mr. Generale and Mr. Wooldridge (A. 167-168, Tr. 182-183; Ex. 11) to discuss the future and problems of the Bahamian bank.

28. On April 11, 1973 Rittmaster called Klein, inquired about the check to the Bahamas bank and was told it was mailed April 3, but nothing had been received from the postal authorities, and Rittmaster suggested that the check be stopped, and since Schweitzer, President of the Bahamas bank, would be in Rittmaster's office Friday, April 13, that a new check be drawn which Rittmaster would have picked up April 12 and give directly to Mr. Schweitzer (A. 78, Tr. 49).

29. Klein drew a new check dated either April 11 or 12, 1973 which was picked up by a messenger from Rittmaster, Lawrence office on April 12 and it was delivered April 13 to Schweitzer in Rittmaster's office and such check was cashed (Tr. 52) and the certificate of deposit was received from the Bahamas bank (Ex. 2, A. 78-80, Tr. 49-53).

30. "Sometime early" Cannon learned that personal unsecured loans were being made by the "A&P Bank" to Rittmaster and Lawrence and had discussed such loans with Rittmaster, Lawrence and Schweitzer (A. 159, Tr. 170).

31. On April 23, 1973 Cannon received two checks in the amount of $25,000 each of the Bahamas bank together with a memorandum from Schweitzer. Cannon or his secretary delivered such checks to Rittmaster and Lawrence representing proceeds of two separate unsecured loans made by that bank to Rittmaster and Lawrence respectively (A. 157-159, Tr. 169-171; Ex. 7).

32. Cannon had actual knowledge of the fiduciary relationship between Rittmaster and Lawrence (as individuals) and Rittmaster, Lawrence Co., Inc. as financial consultants and agents and Rittmaster individually as a director, on the one hand, and plaintiff Aid Auto. on the other hand, by reason initially of the prospectus (Ex. 1) since November 30, 1972, and had such actual knowledge at the time of the substantially contemporaneous purchase by plaintiff of the certificate of deposit and the two unsecured loans to fiduciaries.

33. On April 23 or April 24, 1973 Rittmaster was present at a meeting of the Board of Directors of plaintiff (A. 81, Tr. 53) where he said he felt there was a lot of foreign

interest in United States stocks but that many foreign investors did prefer to conduct their financial transactions through a bank not in the United States and that a financial statement from the bank was forthcoming (A. 81, Tr. 54).

34. On May 25, 1973 Rittmaster handed Klein an envelope at the beginning of the Annual Meeting of plaintiff and thereafter Klein opened it and found a "special type" of financial statement (A. 82, Tr. 55; Ex. 3) which is a slip of paper purporting to describe two banks—"as of November 1st, 1972."

35. On May 26, 1973 Klein called Rittmaster and told him plaintiff desired to retire the certificate of deposit with early maturity (A. 83, Tr. 57). Following further discussions (A. 83-87, Tr. 57-61) Rittmaster advised Klein to contact Colin Davies at the Bahamas bank whom Klein telephoned on August 7, 1973. Davies stated (A. 88, Tr. 63) "that a $50,000 loan unsecured had been made to Rittmaster, Lawrence & Co. based on our deposit being made with their bank. Additionally he said there was a commission of $2,000 paid to Rittmaster, Lawrence & Co. for securing that deposit" (A. 88, Tr. 63-64).

36. Prior to the conversation between Klein and Davies, plaintiff had no information from any source of any unsecured loan to Rittmaster, Lawrence & Co. or to Rittmaster or Lawrence by the Bahamas bank, nor of any commission being paid to Rittmaster, Lawrence for securing the deposit (A. 88, Tr. 63-64).

37. Plaintiff made repeated efforts to obtain early retirement of the certificate of deposit (A. 94, Tr. 71-72), even by offering to forfeit all interest and paying a 1% penalty (Ex. 4, consisting of four letters). No portion of

the $100,000 paid for this certificate of deposit or any interest thereon has been paid or collected from any source.

38. On September 27, 1973 the Securities and Exchange Commission issued its release No. 5425 under the Securities Act of 1933 placing Atlantic and Pacific Bank & Trust Co. Ltd. of Nassau, Bahamas, in the foreign Restricted List of issuers whose securities are being offered in violation of Section 5 of that Act since certificates of deposit are securities under Section 2(1) thereof and no registration statement had been filed or become effective with respect thereto; and reporting that the license of the bank had been revoked and the bank ordered liquidated (Appendix to brief).

39. Plaintiff is a Delaware corporation (Ex. 1) with principal place of business in New York, and Cannon admittedly resides in New Jersey.

ARGUMENT

Introduction

We are content to accept with the Securities and Exchange Commission the epithet "border[ing] on frivolity" twice appearing in Judge Cooper's post-appeal memorandum awarding counsel fees (A. 198-200). See SEC Release 33-5425, Appendix to brief (1a-2a) for the Commission's equal trifling.

It is plain that, at a bare minimum, a certificate of deposit in an *alien* bank should be considered a "security". Certainly, it is the expert administrative view that this particular certificate of deposit is an unregistered "security". SEC Release 33-5425.

Thus, Cannon was compelled to go forward to show either that the security was exempt, or that it was sold in an exempt transaction.

Further, when the showing was made that Cannon induced breach of fiduciary duty, it was necessary for Cannon to make some conceivable showing to justify his conduct. The extraordinary confusion in Judge Cooper's Memorandum (A. 198-200) between an "exclusive relationship" and the corruption of that relationship lacks counterpart in the body of law.*

The following short legal argument should show that all of plaintiff's claims were not only well taken, but compel reversal.

POINT I

Cannon and Cannon Jerold Induced Rittmaster and Lawrence to Breach Their Fiduciary Duty to Aid and Violate Their Trust.

The *Restatement of Agency,* 2nd, §312 states:

> "A person who, without being privileged to do so, intentionally causes or assists an agent to violate a duty to his principal is subject to liability to the principal."

See: Meinhard v. *Salmon,* 249 N.Y. 458 (1928); *Wendt* v. *Fischer,* 243 N.Y. 439 (1926).

The principles espoused in the Restatement have universal acceptance and were accepted in New York. *In Re Brownings Estate,* 177 Misc. 328 (Sur. Ct. N.Y. Co., 1941), aff'd 262 App. Div. 489 (1941), involved the corruption of an agent of the estate by giving him bribes in return for the purchase of coal by the estate from a corporation. The court held that all funds paid the agent were assets of the

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* We plagiarize and adopt newspaper quotation of Equity Funding's Trustee—"slapdash fraud."

estate. See also, *Canadian Ingersoll-Rand Co., Ltd.* v. *Loveman & Sons, Inc.*, 227 F. Supp. 829, 832 (N.D. Ohio 1964) and *Sears Roebuck & Co.* v. *American Plumbing & Supply Co.*, 19 F.R.D. 334 (E.D. Wis. 1956).

The evidence showed that Rittmaster was duly elected a director of Aid on January 25, 1973; that a consulting agreement executed on December 19, 1972 existed between Aid and Rittmaster, Lawrence & Co. whereby it agreed to act as financial consultant to Aid and to receive compensation of $44,000 payable in advance.

Cannon and Cannon Jerold had actual knowledge of the fiduciary relationship of Rittmaster and Lawrence and their firm to plaintiff.

Cannon wilfully procured a breach of trust. Cannon corrupted fiduciaries to act in Cannon's interest and their own interests. There was concealment as well as complete failure to disclose. Cardozo put it simply in *Wendt* v. *Fischer, supra* at p. 444:

> "If dual interests are to be served, the disclosure to be effective must lay bare the truth, without ambiguity or reservation, in all its stark significance."

POINT II

The Corruption of Trust and Breach of Fiduciary Duty Were Carried Out By Violations of Federal Securities Laws.

A. Cannon and Cannon Jerold Are Guilty of Selling an Unregistered Security.

1. The Bahamas bank certificate of deposit is a security.

Title 15 § 77b(1) defines a security to include an "evidence of indebtedness". A certificate of deposit is defined in the Uniform Commercial Code as "an acknowledgment by a bank of receipt of money with an engagement to repay it" U.C.C. 3-104(2)(c). A certificate of deposit is "evidence of indebtedness."

The Bahamas bank was licensed by the Bahamas authorities—NOT by the United States or any state authority—and is therefore not an exempted institution under 15 U.S.C. 77c(a)(2)

Defendants also attempt to claim the certificate of deposit issued by the Bahamas bank is a bankers acceptance as it is used in 15 U.S.C. 77c(a)(3). Section 77b(1) defines a security to include any evidence of indebtedness.

A bankers acceptance is defined as a draft or bill of exchange of which the acceptor is a bank or banker engaged generally in the business of granting bankers' acceptance credits. *Atterbury* v. *Bank of Washington Heights of City of New York,* 241 N.Y. 231 (1925). The certificate of deposit issued by the Bahamas bank does not conform to that definition. The Bahamas bank created an evidence of indebtedness with its issuance of the certificate of deposit.

Defendants have the burden of proof in showing the certificate of deposit issued by a foreign bank is exempt.

Capital Funds, Inc. v. *SEC,* 348 F.2d 582 (8th Cir. 1965); *Lynn* v. *Caraway,* 252 F.Supp. 858 (W.D. La. 1966), aff'd 379 F.2d 943 (5th Cir. 1967), cert. den. 393 U.S. 951.

2. Cannon is a seller as well as a control person under the 1933 Act.

Cannon bought, milked and promoted the Bahamas bank. The statute is clear that a person exercising this amount of control will be deemed to be a controlling person under the statute. The statute also holds Cannon liable as a seller of securities. 15 U.S.C. 77o and 77l. *Lewis* v. *Walston & Co., Inc.,* 487 F.2d 617 (5th Cir. 1973); *In re Caesar's Palace Securities Litigation,* 360 F.Supp. 366 (S.D.N.Y. 1973).

That the issues of the Bahamas bank were unregistered is admitted, and this fact was known to both Cannon and his agents. Cannon cannot now claim he had no knowledge of this fact since he was also a principal of the Bahamas bank.

B. Defendants Including Cannon and Cannon Jerold Knew of the Failure to Inform Aid of Material Facts, i.e., That (1) Bahamas Bank Securities Were Not Registered and (2) Bahamas Bank Was An Empty Shell.

15 U.S.C. § 77(e) prohibits the seller from omitting to state a material fact necessary to make the statements, in light of the circumstances under which they were made, not misleading. Defendants' failure to state that the security was unregistered and it was required to be registered was a material omission of fact. *Korber* v. *Lehman,* 61-64 CCH Federal Securities Law Reporter ¶ 91, 305 (1963).

Defendants also failed to state the material facts concerning financial stability of the Bahamas bank, which was nothing more than a three page scribble, a small safe and a Ponzi deposit concept (Ex. 10; A. 162-167, Tr. 176-181).

The panoply of securities claims were all well taken—indeed, upon "demurrer" compelled judgment for plaintiff under claims 1, 2, 3 and 4.

To award counsel fees for "frivolous" agreement with the SEC (Appendix to brief) cannot conceivably be a proper exercise of discretion.

CONCLUSION

It is submitted

(1) The Court should reverse and direct judgment in favor of plaintiff on all fiduciary claims for $100,000, plus the $44,000 consulting fee, or in the alternative

(2) The Court should vacate and

(a) direct separate trial before a different Court on the fiduciary claims, and

(b) direct subsequent trial upon securities claims with proper instructions on defendants' burdens.

Respectfully submitted,

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APPENDIX

Appendix To Brief

OCTOBER 9, 1973—VOLUME 2, No. 15
SEC DOCKET
A WEEKLY COMPILATION OF RELEASES FROM THE SECURITIES AND EXCHANGE COMMISSION

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SECURITIES ACT OF 1933
Release No. 5425/September 27, 1973

The Commission has placed on the Foreign Restricted List the Atlantic and Pacific Bank & Trust Co. Ltd. of Nassau in the Bahamas.

This reputed bank has issued certificates of deposit in denominations of $50,000 to United States nationals who are endeavoring to exchange these certificates in the United States for valuable assets, including, in one instance, eleven luxury automobiles. All efforts by the persons to whom these certificates have been offered to collect the amounts purportedly represented by the certificates have proved futile. It is reported that on September 7, 1973 the Deputy Prime Minister and Minister of Finance of the Government of the Bahamas, upon the advice of the Ministry of Finance and the Monetary Authority, revoked the license of the Atlantic and Pacific Bank & Trust Co. Ltd. under the authority of the Banks and Trust Companies Regulation Act, and further ordered that the bank wind up its business and be liquidated.

It has not been possible to determine whether the Certificates of Deposit outstanding in the United States purportedly issued by Atlantic and Pacific Bank & Trust Co. Ltd. represent bona fide deposits that have been made or whether these Certificates of Deposit will have any value upon the liquidation of Atlantic and Pacific Bank & Trust Co. Ltd.

Appendix to Brief

Certificates of deposit are securities within the definition of Section 2(1) of the Securities Act of 1933. No registration statement has been filed with the Commission or has become effective covering any securities issued by the Atlantic and Pacific Bank & Trust Co. Ltd., of Nassau in the Bahamas, on the Foreign Restricted List, which is composed of issuers whose securities are being offered in violation of Section 5 of the Securities Act of 1933.

Anyone obtaining additional information with respect to offers of certificates of deposit or other securities purportedly having been issued by Atlantic and Pacific Bank & Trust Co. Ltd. is requested to forward it as soon as possible to Larry B. Grimes, Branch Chief, Division of Enforcement, Securities and Exchange Commission, 500 North Capitol Street, Washington, D. C. 20549.

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SEC DOCKET/493

Appendix To Brief

SEC NEWS DIGEST
a daily summary from the
securities and exchange commission

Issue 73-189
(SEC Docket, Vol. 2, No. 15—Oct 9) September 28, 1973

COMMISSION ANNOUNCEMENTS

ATLANTIC AND PACIFIC BANK & TRUST CO. OF NASSAU ADDED TO FOREIGN RESTRICTED LIST. The Commission has placed on the Foreign Restricted List the Atlantic and Pacific Bank & Trust Co. Ltd. of Nassau in the Bahamas for the reason that certificates of deposit issued by this institution have been distributed in the United States without compliance with the registration provisions of the Securities Act of 1933. Attempts to collect amounts purportedly represented by these certificates have proved futile. It has been reported that the Government of the Bahamas has ordered that Atlantic and Pacific Bank & Trust Co. Ltd. wind up its business and be liquidated. (Rel. 33-5425)

• • •

DAVID A. WOOLDRIDGE, DANIEL E. MANNING SENTENCED. The SEC announced that on September 20 and September 21, a federal jury in the Central District of California (in partial verdicts) convicted David A. Wooldridge of Newport Beach, California, on 7 counts and Daniel E. Manning of Phoenix, Arizona, on 6 counts of an indictment charging violations of the registration and anti-fraud provisions of the securities laws, the mail fraud statute and the conspiracy statute in transactions in the common stock of Capitol Holding Corp. successor in interest to Empire Oil Corporation.

Appendix to Brief

The jury found Stephen J. Mydanick, A New York attorney, not guilty of all charges. On September 25, after the jury reported that it had not yet reached a verdict with regard to William G. London, of Phoenix, Arizona, the court discharged the jury and dismissed all charges against London.

Also on September 25, 1973, Wooldridge and Manning each was sentenced to serve six years imprisonment and fined $10,000.

During the trial, which lasted six weeks, it was disclosed that the defendants unlawfully sold millions of unregistered "control" shares of Capitol and Empire stock to the investing public; that the defendants caused approximately 900,000 unregistered shares of Capitol and Empire to be issued to the public through "sham" acquisitions of Shore Properties, Inc. and Gold Metal Corp., which acquisitions involved non-existent shareholders, backdated agreements and forged signatures; that Empire disseminated a financial statement reflecting oil leases valued at $3,000,000 when, in fact, these oil lease *options* had just been acquired for $4,000; and that Wooldridge distributed press releases announcing a 6 month advanced sale for Capitol's musical comedy play "The Piecefull Palace", when, in fact, the play closed 2 weeks after opening and caused Capitol to lose $250,000. (LR-6078)

Certificate of Service

Douglas I. Milan hereby certifies that on March 7, 1975, I served on Thal & Youtt, 666 Fifth Avenue, New York, New York 10019, attorneys for appellees three copies of Appellant's Brief.

Douglas I. Milan